Joint Council of Teamsters Numbers 3, 28, 37, 42, affiliated with the International Brotherhood of Teamsters on behalf of their affiliated Local Unions including but not limited to Local Numbers 81, 206, 670, 962, 690, 741, 222, 483, 533, 961, 631, 839, 986, 983 and Lanier Brugh Corporation. Case 27–CB–4092–001

May 30, 2003

# **DECISION AND ORDER**

BY MEMBERS SCHAUMBER, WALSH, AND ACOSTA

On April 10, 2001, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondents filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and affirms the judge's rulings, findings,<sup>1</sup> and conclusions as modified and adopts the recommended Order as modified and set forth in full below.<sup>2</sup>

### I. INTRODUCTION

This case involves the Respondents' refusal, beginning in 1997, to represent Lanier Brugh's Pocatello, Idaho drivers because they were not dues-paying union members, even though all of Lanier Brugh's drivers have been jointly represented in a systemwide unit by various local unions and Joint Councils of the International Brotherhood of Teamsters (hereafter collectively known as the Joint Representative) since the 1950s. Respondents also induced the Western Conference of Teamsters Pension Trust to refuse to accept contributions on the Pocatello drivers' behalf by informing it that they were not covered by the parties' collective-bargaining agreement. We adopt the judge's finding that by these actions Respondents violated Section 8(b)(1)(A). We also adopt the judge's finding that all Respondents except Local 983, by wrongly taking the position that these drivers were no longer bargaining unit employees, refused to bargain with Lanier Brugh over the terms and conditions of employment of all of its unit employees in violation of Section 8(b)(3). Because Local 983 timely withdrew from the Joint Representative with the consent of all parties, it had no statutory duty to bargain with Lanier Brugh during the relevant period of time and we therefore find no violation of Section 8(b)(3) with respect to it.

#### II. FACTUAL BACKGROUND

As more fully set forth in the judge's decision, Lanier Brugh and the Joint Representative have been parties to successive collective-bargaining agreements covering a systemwide unit of Lanier Brugh's drivers. During the term of the parties' July 1, 1994, to June 30, 1997 agreement, the Joint Representative was composed of Respondents Joint Council of Teamsters Numbers 3, 28, 37, 42, affiliated with the International Brotherhood of Teamsters on behalf of their affiliated Local Unions including but not limited to Local Numbers 81, 206, 670, 962, 690, 741, 222, 483, 533, 961, 631, 839, 986, and 983.

On March 20, 1997, Local 983 timely submitted to Lanier Brugh and the Joint Representative notice that it would no longer represent Lanier Brugh's Pocatello, Idaho employees after the expiration of the 1994–1997 agreement. Lanier Brugh and union officials duly authorized to represent the Joint Representative met on April 21, 1997, and agreed to delete Local 983 from the agreement as long as the Pocatello drivers remained covered by the contract. At that time, Lanier Brugh and the Joint Representative agreed that Lanier Brugh could list the Pocatello drivers under the heading for Local 483 for purposes of submitting on their behalf contractually-required contributions to the Western Conference of Teamsters Pension Trust.

Lanier Brugh and the Joint Representative then negotiated a successor agreement, which was effective by its terms from July 1, 1997, to June 30, 2000. Although not a party to that agreement, Local 983 nevertheless refused to relinquish its internal union jurisdiction over the Pocatello drivers and the Joint Representative also refused to represent them, in the absence of a disclaimer of jurisdiction by Local 983. Subsequently, Local 983 also informed the Western Conference of Teamsters Pension Trust that the Pocatello drivers were not covered by the collective-bargaining agreement between Lanier Brugh and the Joint Representative, which resulted in the Pension Trust's refusing to accept contributions on their behalf.

<sup>&</sup>lt;sup>1</sup> The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>&</sup>lt;sup>2</sup> We have modified the judge's recommended Order to reflect the violations found and to more closely correspond to the Board's usual remedial provisions. We have also included in the remedy section of this decision provisions that were omitted from the judge's decision. See *Gaucho Food Products*, 311 NLRB 1270 fn. 1 (1993).

We shall substitute a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

#### III. ANALYSIS

# A. Respondents' Refusal to Represent the Pocatello Drivers was Unlawful

We adopt the judge's finding that all Respondents, including Local 983, violated Section 8(b)(1)(A). The evidence is clear that the Pocatello drivers were part of the historic, systemwide unit represented by the Respondents, and that Respondents refused to represent them, and informed the Pension Trust that they were not bargaining unit employees, because they exercised their right, under Idaho's right-to-work law, to refrain from union membership. These actions violated Section 8(b)(1)(A).

# B. Respondents, Except for Local 983, Failed to Bargain in Good Faith with Lanier Brugh

We also adopt the judge's finding that those Respondents which constituted the Joint Representative on and after July 1, 1997, violated Section 8(b)(3) by failing and refusing to bargain in good faith with Lanier Brugh concerning the terms and conditions of employment of its Pocatello unit employees.<sup>3</sup> However, we reverse the judge's finding that Local 983 also violated Section 8(b)(3). Section 8(b)(3) provides that it is an unfair labor practice for a labor organization "to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of [S]ection 9(a)." In light of the judge's findings set forth above, which we adopt, we hold that Local 983, with the consent of Lanier Brugh and the Joint Representative, effectively withdrew from the Joint Representative as of June 30, 1997, the expiration date of the last collectivebargaining agreement between Lanier Brugh and Respondents to which it was a party. Thereafter, it was not the representative of unit employees and, as a result, had no statutory duty to bargain with Lanier Brugh concerning the terms and conditions of employment of those employees. Accordingly, there is no basis for finding that it has violated Section 8(b)(3).

# C. Respondents' Parol Evidence Argument is Without Merit

Respondents assert that the parol evidence rule precludes a finding that the Pocatello drivers remained unit employees following the withdrawal of Local 983 from the Joint Representative in 1997. We do not agree. The Board's 1984 certification of representative and the unit description of the parties' successive collective-bargaining agreements both establish the existence of a systemwide unit. The judge found that Lanier Brugh and the Joint Representative orally agreed, during their 1997 negotiations, to delete Local 983 from the contract provided that the Pocatello drivers would remain in the unit. The oral agreement is, of course, consistent with the documentary evidence establishing the existence of a systemwide unit, which necessarily includes the Pocatello drivers. Accordingly, our decision today is entirely consistent with the parol evidence rule.<sup>5</sup>

# D. Respondents' Estoppel and Waiver Claims are Without Merit

We also reject Respondents' contention that Lanier Brugh is estopped from, or has waived, its claim that the Pocatello drivers remain in the contractual unit. According to Respondents, Lanier Brugh was on notice that there was "a problem" with the status of the Pocatello drivers as early as 1997, when the Pension Trust first notified it that the Pocatello drivers were not covered. As fully discussed in the judge's decision, however, the Pension Trust's 1997 letter stated only that the drivers were no longer represented by Local 983. When Lanier Brugh listed the drivers under the heading for Local 483, pursuant to its 1997 understanding with the Union, the Pension Trust accepted contributions for the drivers until May 1999. Lanier Brugh filed its first unfair labor practice charge on June 28, 1999. That charge was withdrawn after Local 983 agreed to settle it, in October 1999, by becoming a party to the collective-bargaining agreement retroactive to 1997 and resuming its representation of the Pocatello drivers. On November 23, 1999, Local 983 announced that it would not honor that agreement and on February 8, 2000, Lanier Brugh filed the charge that resulted in this proceeding.

The foregoing amply demonstrates that Lanier Brugh vigorously and consistently maintained its position that the Pocatello drivers remained in the bargaining unit. Although Lanier Brugh agreed to the deletion of Local 983 from the contract and from the Joint Representative, the collective-bargaining agreement continued to encompass all of the Employer's drivers in a systemwide unit and the Employer obtained the Joint Representative's explicit agreement to the continued inclusion in the unit

<sup>&</sup>lt;sup>3</sup> These Respondents are: Joint Council of Teamsters Numbers 3, 28, 37, 42, affiliated with the International Brotherhood of Teamsters on behalf of their affiliated Local Unions including but not limited to Local Numbers 81, 206, 670, 962, 690, 741, 222, 483, 533, 961, 631, 839, and 986.

<sup>&</sup>lt;sup>4</sup> The 8(b)(1)(A) violations involving Local 983 do not depend on whether it continued to represent unit employees after June 30, 1997, and the fact that Local 983 withdrew from the Joint Representative is therefore immaterial to our finding that it violated Sec. 8(b)(1)(A).

<sup>&</sup>lt;sup>5</sup> Wehr Constructors, 315 NLRB 867, 868 fn. 4 (1994), enf. denied in part on other grounds 159 F.3d 946 (6th Cir. 1998) (Board does not permit evidence of oral agreements that conflict with the written terms of a collective-bargaining agreement).

of the Pocatello drivers. Accordingly, there is no basis for Respondents' claim that the doctrines of waiver or estoppel bar the prosecution of this case.<sup>6</sup>

## AMENDED CONCLUSIONS OF LAW

- 1. Lanier Brugh Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. Respondents Joint Council of Teamsters Numbers 3, 28, 37, 42, affiliated with the International Brother-hood of Teamsters on behalf of their affiliated Local Unions including but not limited to Local Numbers 81, 206, 670, 962, 690, 741, 222, 483, 533, 961, 631, 839, 986, and 983 are labor organizations within the meaning of Section 2(5) of the Act.
- 3. Respondents Joint Council of Teamsters Numbers 3, 28, 37, 42, affiliated with the International Brotherhood of Teamsters on behalf of their affiliated Local Unions including but not limited to Local Numbers 81, 206, 670, 962, 690, 741, 222, 483, 533, 961, 631, 839, and 986, collectively known as the "Joint Representative," are the joint exclusive collective-bargaining representative of the following appropriate unit: "All drivers in all business establishments owned and controlled by the Employer."
- 4. By failing and refusing to represent the Employer's Pocatello, Idaho unit employees, and by causing the Western Conference of Teamsters Pension Trust to disqualify the Pocatello unit employees from participation in the Pension Trust, the Respondents have violated Section 8(b)(1)(A).
- 5. By failing and refusing to bargain in good faith with the Employer as the representative of its bargaining unit employees, and by abrogating the terms and conditions of employment contained in their collective-bargaining agreement with the Employer with respect to unit employees employed by the Employer at its Pocatello, Idaho facility, the Joint Representative has violated Section 8(b)(3).

# REMEDY

Having found that each Respondent has violated Section 8(b)(1)(A) and that the Joint Representative (all Respondents except for Local 983) has violated Section 8(b)(3), we shall order that the Respondents cease and desist and take certain affirmative action necessary to effectuate the policies of the Act.

Specifically, having found that the Respondents have discriminated against the Employer's Pocatello, Idaho drivers by refusing to represent them and by causing the Western Conference of Teamsters Pension Trust to disqualify them from participation in the Pension Trust, we shall order the Respondents, jointly and severally, to remit to the Pension Trust, with interest, all payments required to restore the Pocatello, Idaho drivers' accounts, as specified in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), and to make whole the employees for all losses suffered as a result of the discrimination against them, in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## **ORDER**

- A. The National Labor Relations Board orders that the Respondents, Joint Council of Teamsters Numbers 3, 28, 37, 42, affiliated with the International Brotherhood of Teamsters on behalf of their affiliated Local Unions including but not limited to Local Numbers 81, 206, 670, 962, 690, 741, 222, 483, 533, 961, 631, 839, and 986, their officers, agents, and representatives, shall
  - 1. Cease and desist from
- (a) Refusing to represent the Employer's Pocatello, Idaho drivers or any other unit employees because those employees have elected not to become union members.
- (b) Informing the Western Conference of Teamsters Pension Trust Fund that the Pocatello, Idaho drivers are not covered by the collective-bargaining agreement and are therefore not eligible to be participants under the Pension Trust.
- (c) Failing to bargain in good faith with Lanier Brugh Corporation by unlawfully attempting to modify the scope of the collective-bargaining unit without the Employer's consent.
- (d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, advise the Western Conference of Teamsters Pension Trust, in writing, that the Pocatello, Idaho drivers are covered by the collective-bargaining agreement between the Employer and the Respondents and that the Respondents have no objection to the Pension Trust's receipt of contributions from the Employer on behalf of those employees.
- (b) Within 14 days from the date of this Order, request, in writing, an immediate accounting from the Western Conference of Teamsters Pension Trust of the amounts

<sup>&</sup>lt;sup>6</sup> See generally *R.P.C. Inc.*, 311 NLRB 232, 233 (1993) (describing elements of equitable estoppel).

necessary to make whole the Pension Trust accounts of the Employer's Pocatello, Idaho drivers so that the accounts will be restored to their full value as if all periodic contributions had been timely made and, upon receiving the accounting, forthwith pay to the Pension Trust, jointly and severally, the stated sums of money in the manner set forth in the remedy section of this decision.

- (c) Within 14 days from the date of a request by the Regional Director for Region 27 of the Board, jointly and severally make whole the Employer's Pocatello, Idaho drivers, with interest, for any losses they may have suffered as a result of Respondents' discrimination against them in the manner set forth in the remedy section of this decision.
- (d) On request, bargain with the Employer as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement: "All drivers in all business establishments owned and controlled by the Employer."
- (e) Within 14 days after service by the Region, post at each Respondent's offices and hiring halls copies of the attached notice marked "Appendix A," and mail a signed copy of the notice to Lee Stein, S. Lee Crook, Loren Robertson, and all other unit employees employed by the Employer at its Pocatello, Idaho facility since November 23, 1999. Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.
- (f) Sign and return to the Regional Director sufficient copies of the notice for posting by Lanier Brugh Corporation, if willing, at all locations where notices to its employees are customarily posted.
- (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

- B. The National Labor Relations Board orders that the Respondent, International Brotherhood of Teamsters Local 983, its officers, agents, and representatives, shall
  - 1. Cease and desist from
- (a) Refusing to represent the Employer's Pocatello, Idaho drivers or any other unit employees because those employees have elected not to become union members.
- (b) Informing the Western Conference of Teamsters Pension Trust Fund that the Pocatello, Idaho drivers are not covered by the collective-bargaining agreement and are therefore not eligible to be participants under the Pension Trust.
- (c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, advise the Western Conference of Teamsters Pension Trust, in writing, that the Pocatello, Idaho drivers are covered by the collective-bargaining agreement between the Employer and the Joint Representative and that it has no objection to the Pension Trust's receipt of contributions from the Employer on behalf of those employees.
- (b) Within 14 days from the date of this Order, request, in writing, an immediate accounting from the Western Conference of Teamsters Pension Trust of the amounts necessary to make whole the Pension Trust accounts of the Employer's Pocatello, Idaho drivers so that the accounts will be restored to their full value as if all periodic contributions had been timely made and, upon receiving the accounting, forthwith pay to the Pension Trust, jointly and severally with the Joint Representative, the stated sums of money in the manner set forth in the remedy section of this decision.
- (c) Within 14 days from the date of a request by the Regional Director for Region 27 of the Board, jointly and severally with the Joint Representative make whole the Employer's Pocatello, Idaho drivers, with interest, for any losses they may have suffered as a result of the Respondents' discrimination against them in the manner set forth in the remedy section of this decision.
- (d) Within 14 days after service by the Region, post at its offices and hiring halls copies of the attached notice marked "Appendix B," and mail a signed copy of the notice to Lee Stein, S. Lee Crook, Loren Robertson, and all other unit employees employed by the Employer at its Pocatello, Idaho facility since November 23, 1999. Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respon-

If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>&</sup>lt;sup>8</sup> See fn. 7, supra.

dent's authorized representatives, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

- (e) Sign and return to the Regional Director sufficient copies of the notice for posting by Lanier Brugh Corporation, if willing, at all locations where notices to its employees are customarily posted.
- (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

# APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to represent Lanier Brugh's Pocatello, Idaho drivers or any other unit employees because those employees have elected not to become union members.

WE WILL NOT inform the Western Conference of Teamsters Pension Trust Fund that the Pocatello, Idaho drivers are not covered by the collective-bargaining agreement and are therefore not eligible to be participants under the Pension Trust.

WE WILL NOT fail to bargain in good faith with Lanier Brugh Corporation by unlawfully attempting to modify the scope of the collective-bargaining unit without its consent.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of this Order, advise the Western Conference of Teamsters Pension Trust, in writing, that Lanier Brugh's Pocatello, Idaho drivers are covered by our collective-bargaining agreement with the Employer and that we have no objection to the Pension Trust's receipt of contributions from the Employer on behalf of those employees.

WE WILL within 14 days from the date of this Order, request, in writing, an immediate accounting from the Western Conference of Teamsters Pension Trust of the amounts necessary to make whole the Pension Trust accounts of Lanier Brugh's Pocatello, Idaho drivers so that the accounts will be restored to their full value as if all periodic contributions had been timely made and, upon receiving the accounting, WE WILL forthwith pay to the Pension Trust, jointly and severally, the stated sums of money.

WE WILL within 14 days from the date of a request by the Regional Director for Region 27 of the Board, jointly and severally make whole Lanier Brugh's Pocatello, Idaho drivers, with interest, for any losses they may have suffered as a result of our discrimination against them.

WE WILL on request, bargain with the Employer as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All drivers in all business establishments owned and controlled by the Employer.

JOINT COUNCIL OF TEAMSTERS NUMBERS 3, 28, 37, 42, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS ON BEHALF OF THEIR AFFILIATED LOCAL UNIONS INCLUDING BUT NOT LIMITED TO LOCAL NUMBERS 81, 206, 670, 962, 690, 741, 222, 483, 533, 961, 631, 839, AND 986

# APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

# FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to represent Lanier Brugh's Pocatello, Idaho drivers or any other unit employees because those employees have elected not to become union members.

WE WILL NOT inform the Western Conference of Teamsters Pension Trust Fund that the Pocatello, Idaho drivers are not covered by the collective-bargaining agreement and are therefore not eligible to be participants under the Pension Trust.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of this Order, advise the Western Conference of Teamsters Pension Trust, in writing, that Lanier Brugh's Pocatello, Idaho drivers are covered by the collective-bargaining agreement between Lanier Brugh and Joint Council of Teamsters Numbers 3, 28, 37, 42, affiliated with the International Brotherhood of Teamsters on behalf of their affiliated Local Unions including but not limited to Local Numbers 81, 206, 670, 962, 690, 741, 222, 483, 533, 961, 631, 839, and 986, collectively known as the "Joint Representative," and that we have no objection to the Pension Trust's receipt of contributions from the Employer on behalf of those employees.

WE WILL within 14 days from the date of this Order, request, in writing, an immediate accounting from the Western Conference of Teamsters Pension Trust of the amounts necessary to make whole the Pension Trust accounts of Lanier Brugh's Pocatello, Idaho drivers so that the accounts will be restored to their full value as if all periodic contributions had been timely made and, upon receiving the accounting, WE WILL forthwith pay to the Pension Trust, jointly and severally with the Joint Representative, the stated sums of money.

WE WILL within 14 days from the date of a request by the Regional Director for Region 27 of the Board, jointly and severally with the Joint Representative make whole Lanier Brugh's Pocatello, Idaho drivers, with interest, for any losses they may have suffered as a result of our discrimination against them.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION 983

Nancy S. Brandt, Esq., for the General Counsel.
Stephen W. Cook, Esq. (Stephen W. Cook, P.C.), of Salt Lake
City, Utah, for the Respondent Union.

#### **DECISION**

### STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice a hearing in this matter was held before me in Salt Lake City, Utah, on November 28, 2000. The charge was filed by Lanier Brugh Corporation (the Employer), on February 8, 2000, and an amended charge was filed on May 24, 2000. Thereafter, on May 31, 2000, the Regional Director for Region 27 of the National Labor Relations Board (the Board), issued a complaint and notice of hearing alleging violations by the captioned unions (Respondent, Union, or Joint Representative), of Section 8(b)(1)(a) and (3) of the National Labor Relations Act (the Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel (the General Counsel), and counsel for the Respondent. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following

#### FINDINGS OF FACT

#### I. JURISDICTION

The Employer, a corporation, maintains principal place of business in Portland, Oregon, and is engaged in the business of delivering mail in and between the States of Colorado, Nevada, Utah, Idaho, Washington, California, and Oregon as a contract mail carrier for the U.S. Postal Service. The Employer annually purchases and receives good valued in excess of \$50,000 directly from points and places located outside the State of Oregon, and annually derives gross revenues in excess of \$50,000 from the transpiration of mail in interstate commerce under arrangement with, and as an agent for, the U.S. Postal Service (USPS), which operates between various States in the United States, and functions as an essential link in the transportation of mail in interstate commerce. It is admitted and I find that the Employer is and at all material times has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that at all material times the Respondent Union is and has been a labor organization within the meaning of Section 2(5) of the Act.

## III. ALLEGED UNFAIR LABOR PRACTICES

# A. The Issues

The principal issues in this proceeding are whether the Respondent Union has violated Section 8(b)(1)(a) and (3) of

the Act by failing and refusing to represent certain employees and by attempting to cause the Teamsters Pension Trust to disqualify the employees from coverage under the pension trust provisions of the collective-bargaining agreement; and by unlawfully attempting to modify the scope of the bargaining unit and thereby failing to bargain in good faith with the Employer.

## B. The Facts

Since about 1937, the Employer has been a contractor engaged in the business of delivering mail for the USPS. Over the years the Employer's postal service contracts have proliferated, and currently the Employer has some 20 contracts with the USPS, operates in some seven States, and employs a total of approximately 160 drivers, 80 of whom are full time and 80 of whom are part-time or casual drivers. In the 1950s the Employer entered into its initial collective-bargaining agreement with Local 81 of the Teamsters Union. Since that time the names of various local unions and joint councils have been added to the collective-bargaining agreement as the Employer has acquired various routes and hired drivers from and within the geographic jurisdiction of other Teamsters locals. One such local union is Local 983, which maintains its office and hiring hall in Pocatello, Idaho.

In 1984, a decertification petition was filed by an individual in Case 36–RD–1036. A representation hearing was held followed by a representation election. The systemwide scope of the unit was an issue in that proceeding. On November 21, 1984, the Joint Representative (at that time consisting of some seven local unions) was certified as the collective-bargaining representative of the following systemwide unit of employees:

All drivers employed by Lanier Brugh Corporation and dispatched from its Portland, Oregon facility to routes in Oregon, Washington, Nevada, Idaho, Colorado and California, and all mechanics employed at the Portland facility; excluding office clerical employees, guards and supervisors as defined in the

Since at least 1986, and thereafter during the course of successive collective-bargaining agreements, the introductory paragraph of the contract has stated: "THIS AGREEMENT is entered into by and between LANIER CORPORATION, hereinafter referred to as the Employer and JOINT COUNCIL OF TEAMSTERS NUMBERS 3, 28, 37, AND 42, affiliated with the INTERNATIONAL BROTHER-HOOD OF TEAMSTERS on behalf of their affiliated Local Unions including but not limited to . . . referred to herein as the Union." Article 1, the "Recognition and Union Membership" provision of the contract, has contained the following language: The Union is recognized as the sole collective bargaining representative for all drivers in all business establishments owned and controlled by the Employer." Further, under the "Pension" provision of the contracts, the parties have agreed that "The Employer shall pay into the Western Conference of Teamsters Pension Trust Fund on account of each member of the bargaining unit the following amounts . . . ." Additionally, seniority, including bidding on positions or routes, has always been on a systemwide basis. Thus, for example, a qualified employee in California would be entitled to a job opening in Pocatello, Idaho, where Local 983 maintains its office. Finally, each of the contracts has contained a union security clause mandating union membership after 30 days of employment.

The Employer has employed one full-time and one or two part-time or "casual" drivers on routes to and from Pocatello, Idaho (Pocatello drivers), a city within the geographical jurisdiction of Local 983. None of the Pocatello drivers have opted to become members of Local 983. The representation of these employees did not appear to present a problem until Robert Lee, formerly a business agent for Local 983, became secretary/treasurer of that local. Lee testified that upon being elected to the position of secretary/treasurer in 1995, and thereby becoming the chief executive officer, he undertook, in effect, a costs-benefits analysis of the Lanier Brugh contract insofar as it pertained to his Local, and determined that it did not make economically sound business sense to continue representing the Pocatello drivers.

Lee testified that he convinced the Local's executive board that the continued representation of the 2 or 3 Pocatello drivers adversely impacted his 1200-member local Union, and that the local's "accommodating this particular contract for over 12 years" should not continue beyond the contract termination date of June 30, 1997. Thus, because the employees were not union members they could not vote to ratify any proposed contract, and could not even make contract proposals, and, according to Lee, it was impossible for the local to fairly represent them and "for us to be at the negotiation table." Maintaining a file on the employees, sending out the contract reopening letter every 3 years, and other office expenses such as postage and telephones, were added factors to be considered. In summary, according to Lee, the potential risk and liability attendant to the Local's duty to fairly represent the employees simply was not worthwhile or justified. Moreover, according to Lee, even if the Pocatello drivers had been dues-paying members of the Union, economic reality would have dictated that the local file a disclaimer of interest as this contract "wasn't good. It was an adverse impact to the people that elect me."

On March 20, 1997, a month prior to the scheduled negotiations for a successor contract, Lee sent a letter to the Employer stating that:

Teamsters Local 983 will no longer represent the employees of Lanier Brugh Corporation after the expiration of the current labor contract.

<sup>&</sup>lt;sup>1</sup> The Union, as joint exclusive collective-bargaining representative, currently consists of 4 joint councils and 13 or 14 (with the inclusion of Local 983) local unions.

<sup>&</sup>lt;sup>2</sup> Since 1986, Idaho has been a "right-to-work" State; thus, union membership is by law mandated to be entirely voluntary and may not be involuntarily imposed by a union-security clause in a contract requiring union membership as a condition of employment.

<sup>&</sup>lt;sup>3</sup> In fact the record shows that Local 983 was never at the negotiating table and that in fact many of the local unions that were parties to the contract never attended negotiating sessions. Because wages and other significant matters were dictated by Department of Labor guidelines, negotiating sessions were historically routine, pro forma meetings of short duration.

Teamsters Local 983 thus will also no longer enter into a contract agreement with Lanier Brugh Corporation nor will be a party to enter into any other contract agreements which includes both the Oregon Teamster Employers Trust and the Western Conference of Teamsters Pension Trust Fund.

The bargaining session for a 3-year successor contract was held on April 21, 1997. The Employer was represented by Gary Witter, controller/vice president, and Troy Brugh, president and secretary. Eric Slind, business representative for Local 690, was selected by the various constituent unions to be the chairman of the Union's negotiating committee. Other business representatives were also in attendance.

Gary Witter testified that part of his duties as controller involves collective bargaining and administration of the collective-bargaining agreement with the Union. He has been involved in negotiating all agreements since 1989. At the negotiating session of April 21, 1997, Witter asked Slind what his authority was, and Slind said that he was representing all of the locals. During a preliminary conversation, prior to the meeting being called to order and everyone sitting down at the table, Slind placed on the table a copy of Lee's aforementioned March 20, 1997 disclaimer letter, and asked Witter and Brugh, who was sitting next to Witter, whether they had any problem with deleting Local 983 from the agreement. Witter, who had received a copy of Lee's letter prior to that date and was familiar with it, replied that there was no problem as long as the Pocatello drivers remained covered under the contract. Then he asked Slind what local number to place beside the Pocatello employees as it was necessary to indicate on the trust fund pension contribution reports, submitted on a regular basis to the trust fund, the local to which each employee was assigned. Slind replied, according to Witter, that Witter should just enter on the form the next nearest local union that was a party to the contract. Witter assumed this was the Boise local.<sup>4</sup> Indeed, the Pocatello drivers were driving routes between Pocatello and Boise. Nothing more was said about the matter.<sup>5</sup>

Witter testified that over the years the Union has added and removed local unions from the contract as it saw fit when locals would dissolve and/or merge, and when the Employer expanded its operations into the geographic jurisdiction of other locals. Such matters have never been an issue in negotiations; in fact, the Employer had been told that the internal administration of the Union and its constituent locals, and the modification of the contracts' preamble or introductory language reflecting such changes, was of no concern to the Employer. Thus, Witter did not consider the removal of Local 983 from the contract to be of any significance at the time.

Troy Brugh testified that at the negotiating session on April 21, 1997, at the Portland, Oregon conference room of Local 81, prior to the opening of the meeting, as people were walking

around, getting coffee, and taking their seats, Slind presented the Local 983 disclaimer letter and asked if there was any problem with it. Brugh and Witter replied that there was no problem with what Local 983 wanted to do so long as the drivers were covered under the contract and continued to be covered under the health and welfare and pension funds of the contract. Slind replied that the Employer could assign these contributions "to the nearest Local to that [Pocatello] area" on behalf of the Pocatello drivers, and went on to identify the Boise Local as the appropriate Local in this regard. Slind went on to say that the elimination of Local 983 from the contract was the Union's responsibility and it would be taken care of. Brugh recalled that he was satisfied with this commitment by Slind, on behalf of the Union, because absent such a commitment the Employer could not have moved forward with negotiations.<sup>6</sup> Then negotiations commenced and were concluded the same day with agreement on a 1997-2000 contract. The agreement was signed on September 5, 1997.7

As Slind had suggested, the Employer thereafter "assigned" the Pocatello employees to the Boise local, Local 483, when it submitted the applicable pension trust forms and contributions to the Pension Trust. No further thought was given to the matter for the ensuing 18 months. Then, on May 28, 1999, the Pension Trust sent a letter to the Employer stating that the Employer's contributions on behalf of the three Pocatello drivers from July 1, 1997, through March 30, 1999, "appear to be in error and unacceptable to the Trust. It appears that the referenced individual(s) have not been performing work covered by the collective bargaining agreement for the period in question."

Shortly after receiving this letter Witter and Brugh phoned Greg Thompson, a representative of the Pension Trust, who apparently said that he would check with Boise Local 483 regarding coverage of the Pocatello drivers. Then Witter and Brugh, in a conference call, both spoke with Slind. Witter reminded Slind of the foregoing conversation they had had at the outset of the April 21, 1997 negotiating session regarding the matter of coverage for the Pocatello drivers. Slind said that he did not recall the conversation; but he further said that he would look into the matter and try to get it straightened out, and would get back to Witter. He did not do so. After speaking with Slind, Witter phoned Phil Ferguson, business agent for Boise Local 483. Ferguson indicated that he had previously received a call from Thompson regarding the matter. Witter explained that Local 983 did not want to represent the Pocatello employ-

<sup>&</sup>lt;sup>4</sup> While it appears that the office of the Salt Lake City, Utah local is, in fact, closer to Pocatello, this is immaterial to the conclusions reached herein.

<sup>&</sup>lt;sup>5</sup> Both Slind and Mark Tracy, business representative for Local 533, another signatory local, testified that in fact there was no such conversation about this matter at the meeting on April 21, 1997.

<sup>&</sup>lt;sup>6</sup> Brugh testified that the contractual arrangement between the Employer and the USPS is dictated by Department of Labor (DOL) guidelines and wage determinations: Under government contracting procedure any wage rates and fringe benefits must be approved and sanctioned first by the DOL and then, after negotiations are completed, by both the USPS and the DOL; further, it is mandated by these Federal agencies that 100 percent of the drivers within any given collective bargaining unit must be covered by the same terms and conditions of employment. Thus, eliminating the Pocatello employees from coverage under the Union contract by making them ineligible for contractual fringe benefits could, in turn, cause the USPS to refuse to renew the Employer's carrier contracts with the USPS.

<sup>&</sup>lt;sup>7</sup> A current contract, which has been negotiated but not yet ratified, extends from July 1, 2000, to June 30, 2005.

ees. Ferguson, according to Witter, offered to accept the Pocatello drivers "for a fee," providing that a document was signed whereby Local 983 would relinquish its jurisdiction over the Pocatello drivers and cede jurisdiction to the Boise local. Ferguson said that he would phone Robert Lee and see if an arrangement could be worked out for the transfer. Within a few days Ferguson phoned Witter and said that Lee refused to enter into such an arrangement.

Thereupon, Witter phoned Ken Thompson, who at the time was the current chairman of the Union's negotiating committee as well as business agent for Local 741, another constituent local. Thompson said that he did not know what to make of the matter, but that his local would represent the Pocatello drivers provided he got the jurisdictional transfer from Lee. Thompson said that he would check on the matter and get back to Witter. He did not do so.

The Employer then received another letter from the Pension Trust, dated June 15, 1999, again stating that the Employer's contributions on behalf of the Pocatello drivers are "unacceptable." And on June 21, 1999, the Employer received a pointed letter from Lee suggesting, inter alia, that the Employer was improperly "disguising" the fact that Local 983 no longer represents the Pocatello drivers, and is committing "fraud" by falsely representing to the Pension Trust that the Pocatello drivers are covered by the contract as a result of their affiliation with a sister local.

Following these communications, the Employer, on June 28, 1999, filed the following charge with the Board (Case 27–CB–4016–2). Because the "Basis of the Charge" language is explicit and presents the sequence of events in a concise manner, and is also relevant to credibility matters, it is set forth in full:

During the past month the Teamsters Union and the Western Conference of Teamsters Pension Trust have informed us that three of our employees (who are part of the collective bargaining unit) cannot participate in the company Pension and Health & Welfare plans because they work in the jurisdiction of Local 983 Pocatello, Idaho.

Local 983 notified the Union in 1997, during contract negotiations, that they did not want to continue to be a party to the Lanier Brugh labor contract. Their Local number was removed from the contract and the Union negotiating committee told Lanier Brugh to shift the contributions for these employees to the nearest jurisdiction which was Local 483 Boise, Idaho. After a recent pension audit, it was noted that contributions for the Pocatello employees were being reported as Local 483. The Pension Trust send [sic] a letter dated May 28, 1999 to Lanier Brugh Corporation stating the contributions could not be accepted and would be returned to the employees. The Pension Trust will not accept contributions on three Pocatello employees because the local in that jurisdiction elected not to represent them. Our three Pocatello employees chose not to join the Union because of being in a "right to work" state. When our full-time employee Mr. Crook did attempt to join the Local 983 on June 19, 1999 in an effort to keep his pension in tact, he was denied membership.

We believe that all Lanier Brugh employees which are truck drivers are part of the collective bargaining unit have a right to pension contributions and cannot be denied because they did not join the Union ("right to work" state only) or work out of a jurisdiction not currently included in the Labor contract.

Witter testified that the Employer was subsequently advised by a Board agent from the Board's Regional Office that the matter had been resolved in favor of the Employer's position. The Board agent thereupon solicited the Employer to withdraw the charge and the Employer did so. On September 23, 1999, the Regional Office issued a letter, signed by the Regional Director, that the captioned matter had been withdrawn.

On October 14, 1999, Lee, on behalf of Local 983, wrote a letter to Greg Thompson, Contract Review, of the Western Conference of Teamsters Pension Trust Fund, with copies to the Employer and the Board's Regional Office, inter alia, as follows:

Please be advised that a tentative agreement and resolution has been reached between Teamster Local 983 and Lanier Brugh Corporation.

The agreement includes that Teamster Local 983 will rescind its letter of disinterest and will agree to be a party to the Lanier Brugh labor contract dating back to 1997. This understanding should secure the pension contributions which were paid into the trust from 1997 to the present.

. . . .

Again, this agreement is tentative and when formalized it may only be inclusive up to the contract expiration.

Witter testified that as far as the Employer was concerned this was the end of the matter, and he was not advised by anyone that the Employer was expected to do anything further to "formalize" the "tentative" agreement as Lee had expressed in his letter. Indeed, there was no "agreement" to be "formalized" as far as he knew. On October 27, 1999, Greg Thompson, supervisor, contract review, of the Pension Trust, sent a letter to Lee, with a copy to the Employer, stating that the Pension Trust had received Lee's October 14, 1999 letter concerning the tentative agreement, and that, "We will need to receive written documentation that Local 983 is party to the July 1, 1997 to June 30, 2000 labor agreement. Please forward a fully executed agreement within thirty (30) days." The Union did not contact the Employer or send the Employer a revised contract including the name of Local 983 as one of the signatory locals.

Then, on November 23, 1999, Lee wrote another letter to Thompson, with a copy to the Employer, the Regional Office of the Board, the president of Union Joint Council 3, Ralph Taurone, and others, stating, inter alia, as follows:

Last month, you sent correspondence to Local 983 outlining that a formalized document needed to be in place so that the pension contributions could be retained for the Pocatello Lanier Brugh employees dating back to 1997. This request was made [sic] to have completed within 30 days. Over 30 days later, as of this date and time, neither Lanier Brugh nor its Pocatello employees have communicated to this local un-

ion that they in fact want to formalize the tentative agreement which was negotiated by concerned and interested parties.

. . .

So within the guidelines of that Taft-Hartley [Act] (1947), they [the Pocatello drivers] want to exercise the right to join a union and within the guidelines of 14b and extended into Idaho's Right-to-Work-Law, they want to exercise their right to not join a union.

They have both rights under the NLRA and the Right-to-Work-Law. However, it appears that their intent as of this date circumvents and abuses the NLRA which is the basis of their constitutional rights.

They, in essence say that they want the right to join a union to experience all aspects of the collective bargaining agreement, but in evidence [sic] do not want to join, and will not. They want to attach themselves as a "rider," even without a bargaining representative. This is very dangerous for employers with this precedence . . . .

Secondly, the Pocatello employees and Lanier Brugh company have not shown either appreciation or receptiveness to the hard work that the NLRB, Joint Council 3, Mr. Ralph Taurone, Local 983, and Steve Cook, Attorney-at-Law completed in the attempt to find a resolution.

. . .

In conclusion, the NLRB, the Joint Council, and this Local Union attempted to resolve this issue in good faith, but yet the Lanier Brugh Company and its Pocatello employees only want to really not have a bargaining representative but yet attach themselves as a "rider" to the labor contract just because they perform bargaining unit work.

This is an injustice to the intent of why the NLRA was created. It is the right to join a union, and to collectively bargain, not to abuse the right to join and collectively bargain by being a rider. For after all the dust is settled can the bargaining representative bargain when the Pocatello employees have no input or voting power on the agreement? The answer is no. Therefore, due to the lack of interest by Lanier Brugh and its Pocatello employees; [sic] Local 983 through the input of its Local executive board and its membership has no interest in entering into a formal contract agreement with Lanier Brugh or its employees.

It would be an injustice to the nearest Local Union (Local 222—Salt Lake City) to assume the risk and liability for these employees, so this local union [Local 983] will retain its jurisdiction within all geographical boundaries pertaining to Lanier Brugh, but will however continue to severe [sic] any and all contractual relationships as so terminated in 1997 within guidelines of the NLRA.

The Employer understood this letter to state, insofar as the Employer was concerned, that Local 983 was reneging on its "tentative" agreement to resolve the unfair labor practice charge against it and the Union. Then, the Pension Trust, on December 9, 1999, wrote to the Employer and advised that as there had been no final resolution of the matter regarding the inclusion of the Pocatello drivers under the contract, the said employees were therefore ineligible for coverage by the Pen-

sion Trust. Simultaneously, the Pension Trust refunded certain Employer trust fund contributions directly to these employees.<sup>8</sup>

Thereupon, on February 8, 2000, the Employer filed the instant charge in this matter.

## C. Analysis and Conclusions

As noted above, in 1984 the Board certified the Union as the exclusive representative of all the Employer's drivers on a systemwide basis because of the systemwide integration of the Employer's operations. Thereafter, the successive collective-bargaining agreements have reflected this systemwide unit. Since at least 1986, and thereafter during the course of successive collective-bargaining agreements, the "Recognition and Union Membership" provision of the contract has contained the following language: "The Union is recognized as the sole collective bargaining representative for all drivers in all business establishments owned and controlled by the Employer." Further, such contracts have recognized systemwide seniority as governing the rights of employees to bid on positions and move from location to location.

The Union, in its brief, agrees with the well-established principle that a party may not insist to impasse on a change in the scope of an established collective-bargaining unit because the scope of a unit is a nonmandatory subject of bargaining. *Reichhold Chemicals, Inc.*, 310 NLRB 1228 (1991); *Boston Edison Co.*, 290 NLRB 549, 553 (1988). However, the Union maintains that the Employer's acquiescence in deleting Local 983 from the introductory paragraph of the contract constituted, in effect, an implied agreement to alter article 1, the "Recognition and Union Membership" provision, which sets forth and confirms the historic systemwide scope of the unit; therefore, according to the Union's rationale, the Employer thus voluntarily excluded from the unit scope all those employees within the jurisdiction of Local 983, namely the Pocatello drivers.

Clearly the Employer made no such agreement, either explicit or implied. In fact, the Employer made it abundantly clear to Slind, as the designated spokesperson for the Joint Representative, that it did not care whether Local 983 was or was not a party to the contract so long as the Pocatello drivers, who had been covered by the contract for many years in the past, continued to be covered by the contract in the future. As Brugh testified, the Union had made it clear that it considered the introductory clause of the contract to be the Union's bailiwick to change and modify as it saw fit by adding and/or deleting signatory unions over time; changes of this sort made no substantive difference. But the matter of unit scope was of no little significance to the Employer, as the exclusion of any drivers from coverage under the contract was critical to the continued viability of the Employer's carrier contract with the USPS, that is, to the Employer's very existence; and the Employer not only did not, but could not, agree to this.

In this regard, I credit the testimony of Witter and Brugh. Both appeared to have a clear recollection of their conversation with Slind at the outset of the April 21, 1997 negotiating meeting. I am mindful of the fact that, as the Union points out in its

<sup>&</sup>lt;sup>8</sup> It appears that because of applicable tax laws the employees were required to pay Federal income tax on the refunded trust proceeds.

brief, the testimony of Witter and Brugh regarding this conversation is not identical. Thus, Witter testified that Slind, when asked which local union number to place beside the names of the Pocatello drivers on the pension trust forms, replied that the Employer should assign the Pocatello drivers to the next nearest local union without specifically mentioning the Boise local, while Brugh testified that Slind replied that the Employer could assign these contributions to the nearest local on behalf of the Pocatello drivers, and went on to identify the Boise Local as the appropriate local in this regard. This subtle variation in testimony is certainly understandable given the fact that the conversation had occurred some 3-1/2 years in the past. What is of overriding importance, however, is that both Witter and Brugh credibly testified, I find, that such a conversation did in fact occur and that Slind, on behalf of the Joint Representative, assured the Employer that the Pocatello drivers would continue to be covered under the contract and should be assigned by the Employer to some local other than Local 983. I do not credit the denials of Slind and Tracy that no such conversation oc-

Further, I do not credit the testimony of Lee, Slind, or Tracy to the effect that it is virtually impossible for one local union to cede jurisdiction over employees, for representation purposes, to another local. Abundant record evidence shows that while geographical jurisdiction is certainly jealously guarded, the only obstacle to ceding representational jurisdiction is, perhaps, the willingness of the local unions to agree to the arrangement; although, as the record shows, even this may not be necessary. Thus Slind, I have found, immediately advised the Employer to reassign the Pocatello drivers from Local 983 to the Boise local even before he sought the agreement of either of those locals. It is reasonable to assume that Slind would not have made such a statement if he believed he had no authority to do so.

In addition, the conversations that Witter and Brugh had with other business representatives is significant. They both spoke with Phil Ferguson, business agent for Boise Local 483, regarding the matter. When Witter explained that Local 983 did not want to represent the Pocatello employees, Ferguson, according to Witter, offered to accept the Pocatello drivers "for a fee," providing that a document was signed whereby Local 983 would relinquish its jurisdiction over the Pocatello drivers and cede jurisdiction to the Boise Local. Further, Ferguson said that he would phone Robert Lee and see if an arrangement could be worked out for the transfer. Within a few days, Ferguson phoned Witter and said that Lee refused to enter into such an arrangement. Then Witter phoned Ken Thompson, who at the time was the current chairman of the Union's negotiating committee as well as business agent for Local 741, another constituent local. Thompson said that he did not know what to make of the matter, but offered, on behalf of Local 741, to represent the Pocatello drivers provided he got the jurisdictional transfer from Lee. Thompson said that he would check on the matter and get back to Witter. He did not do so. Thus, two different business agents, one of whom was the chairman of the Union's negotiating committee at the time, voluntarily offered to accept the Pocatello drivers into their locals provided this arrangement was satisfactory to Lee. As neither Thompson nor Ferguson testified in this proceeding, the testimony of Witter and Brugh stands unrebutted. Lastly, Lee, in his November 23, 1999 letter to the Pension Trust, does not state that the various charters and internal rules governing the interrelationship of locals precludes the ceding of representational jurisdiction. Rather, as set forth above, he affirms that Local 983 will not do so because

[i]t would be an injustice to the nearest Local Union (Local 222—Salt Lake City) to assume the risk and liability for these employees, so this local union [Local 983] will retain its jurisdiction within all geographical boundaries pertaining to Lanier Brugh, but will however continue to severe [sic] any and all contractual relationships as so terminated in 1997 within guidelines of the NLRA.

From the foregoing it is crystal clear that the only obstacle to the arrangement initially proposed by Slind in April 1997, whereby the Pocatello drivers would be transferred for pension trust reporting purposes and other representational purposes to another local, is the obstacle imposed by Lee's refusal to permit the Pocatello drivers to be represented by any other constituent local. Indeed, it appears that the Union has given Lee full authority over this matter and has agreed to let Lee speak for the Joint Representative as well as its constituent locals.

What Lee emphasized during his testimony is that Local 983 did not want to represent the Pocatello drivers because of the economics of the situation vis-à-vis his local. However, there is no adverse economic impact to Local 983 if Local 983 no longer represents these employees. Therefore, I conclude, there is some other reason for Lee's refusal to cede jurisdiction to other willing locals that, insofar as the record shows, have voiced no similar concerns. The only reasonable conclusion under the circumstances, as supported by abundant record evidence, is that Lee's actions have been motivated by the fact that the Pocatello drivers have elected not to become members of Local 983; this is their right under Idaho's right-to-work statute, and neither the Union nor the Employer may interfere with this right. To deny union representation and contractual benefits to employees for this reason is clearly unlawful.

As the General Counsel has presented convincing evidence that the Union, with Lee as its de facto spokesman, is attempting to retaliate against the Pocatello drivers by denying them benefits under the pension trust because of their nonmembership in Local 983, it is incumbent upon the Union, under the Board's Wright Line<sup>9</sup> decision, to show that in fact it would have taken the same action even if the Pocatello drivers had at all times been members of the Union. I do not credit Lee's self-serving testimony that it was virtually impossible to cede jurisdiction to another local; abundant record evidence shows that in fact, assuming that the formality of ceding jurisdiction it is even necessary under the circumstances herein, it is a simple matter of consent between local unions. Nor do I credit Lee's testimony that he would have taken the same action even if the Pocatello drivers had in fact been members of the Union; such testimony that a responsible, self-respecting,

<sup>&</sup>lt;sup>9</sup> Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in NLRB v. Transportation Management Corp., 462 U.S. 393 (1983).

elected union official would deny pension benefits to a long time union brother under the circumstances herein simply defies credulity and is unsupported by other credible evidence. On the basis of the foregoing, I find that the Union, including Local 983, has not met its burden of proof under *Wright Line*.

It is clear that, as stated by the Board in Laborers Local 101 (Bake-Line Products), 329 NLRB 247 (1999), "an exclusive bargaining agent may, for economic or other valid reasons, avoid its statutory duty to bargain on behalf of the unit it represents by unequivocally and in good faith disclaiming further interest in representing the unit," providing that the disclaimer is not made for an improper purpose. Here the Joint Representative, not its constituent Local 983, is the "exclusive bargaining agent" of the unit employees, and there is no contention that the Joint Representative ever disclaimed interest in representing the systemwide unit. Moreover, any such disclaimer must be "unequivocal" and in "good faith." Here there is no unequivocal disclaimer because any disclaimer must be coextensive with the recognized or, in this case, certified unit, and because the Employer was told that Local 983's disclaimer would not affect the rights of the Pocatello drivers; and, precisely because the disclaimer was made for an improper, discriminatory, and unlawful purpose, as found above, it has not been made in good faith. Accordingly, on the basis of the foregoing, I find that by such conduct the Joint Representative and its constituent Local 983 have violated Section 8(b)(1)(a) and (3) of the Act as alleged.

The Respondent maintains that the Employer's charge is time barred by Section 10(b) of the Act. Clearly the Employer was not aware of any problem from April 21, 1997, when Local 983 withdrew from the contract, until May 28, 1999, when the Employer received a letter from the Pension Trust stating that the contributions on behalf of the three Pocatello drivers from July 1, 1997, through March 30, 1999, "appear to be in error and unacceptable to the Trust. It appears that the referenced individual(s) have not been performing work covered by the collective bargaining agreement for the period in question." Immediately following the receipt of this letter the Employer attempted to resolve the matter. Then, being put off by the Union, it filed a charge with the Board on June 28, 1999, in Case 27-CB-4016-2. After being assured by a representative of the Regional office that the matter had been resolved, the Employer was solicited to withdraw the charge, which it did. Following these events, it was not until receipt of a copy of Lee's foregoing letter to the Pension Trust dated November 23, 1999, that the Employer was indirectly advised that, in substance, Lee was reneging on his agreement to settle the Board charge. Thereupon, on February 8, 2000, the Employer filed the instant charge in this matter.

The gravamen of the Employer's charge, upon which the complaint is based, is not the fact that Local 983 no longer

wanted to represent the Pocatello drivers and elected to withdraw as a signatory to the contract; this makes no difference. Rather, it is the refusal of the Union, including Local 983, to permit the Pension Trust to receive and apply the Employer's pension contributions to the trust fund accounts of the Pocatello drivers; this, in effect, excludes them from coverage under the contract and makes a great deal of difference. This occurred on and after November 23, 1999. Prior to that time the Pension Trust had accepted the contributions on behalf of the Pocatello drivers. As the charge was filed on February 8, 1999, it was well within the 10(b) 6-month limitation period. Accordingly, I find the Respondent's 10(b) argument to be without merit.

## CONCLUSIONS OF LAW

- 1. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. The Union and Local 983 are labor organizations within the meaning of Section 2(5) of the Act.
- 3. The Union and Local 983 have violated Section 8(b)(1)(a) and (3) of the Act as alleged in the complaint.

## THE REMEDY

Having found that the Union and Local 983 have violated and are violating Section 8(b)(1)(a) and (3) of the Act, I recommend that they be required to cease and desist therefrom and in any other like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act, and to cease and desist from refusing to bargain in good faith with the Employer. The Union and Local 983 shall be required to advise the Pension Trust that the Pocatello drivers are a part of the collective-bargaining unit and that there is no objection to the Pension Trust's acceptance of the Employer's contributions on behalf of the Pocatello drivers. Further, the Union and Local 983 shall make whole the pension trust accounts of the Pocatello drivers in the amounts necessary to restore the said accounts to their full value as if all periodic contributions had been timely made. Further, the Union and Local 983 shall be required to reimburse the Pocatello drivers, with interest, for any amounts they expended for payment of taxes, supplemental outlays for other retirement accounts, or other expenses they may have incurred as a result of the Union's and Local 983's discrimination against them. Finally, the Union and Local 983 shall be required to post an appropriate notice, attached hereto as "Appendix," and to mail signed copies of the notice to each of the Pocatello drivers; and, in addition, to provide sufficient signed notices for the Employer to post and/or distribute to its employees should it be willing to do

[Recommended Order omitted from publication.]